

Kelly D. Sutherland, OSB #87357
ksutherland@logs.com
SHAPIRO & SUTHERLAND, LLC
5501 N.E. 109th Court, Suite N
Vancouver, WA 98662
Telephone: (360) 260-2253
Facsimile: (360) 260-2285
Attorneys for Shapiro & Sutherland, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DENISE and KENNETH COOK,)	
)	
Plaintiffs,)	Case No. 10-cv-3121-PA
)	
vs.)	REPLY OF DEFENDANT SHAPIRO &
)	SUTHERLAND, LLC TO PLAINTIFF'S
)	VERIFIED OBJECTION TO
BENEFICIAL OREGON, INC. and)	DEFENDANT'S MOTION FOR
SHAPIRO & SUTHERLAND, LLC)	SUMMARY JUDGMENT
)	
)	
Defendants.)	

I. INTRODUCTION

Pursuant to FRCP Rule 56, defendant Shapiro & Sutherland reply to Plaintiff's "Verified Opposition" to Defendant's Shapiro & Sutherland, LLC's Motion for Summary Judgment (Dkt #42). This reply is supported by Declaration of Vena Sen-Crowe and supplemental Declaration of Richard Magatelli.

Plaintiff's opposition to defendant's Motion for Summary Judgment, rest on two grounds First, claim of fraud within the "Shapiro Attorneys Network" and that the Trustee's agent did not

1 appear and continue Trustee's Sale by public proclamation on December 17, 2010 to January 5,
2 2011.

3 II. SUMMARY OF ARGUMENT

4 In order for a genuine issue of material fact to exist, there must be sufficient evidence for
5 a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.* 477
6 U.S. 242, 248 (1986). In this case, the allegations are false and there is no evidence present by
7 the plaintiffs which a reasonable fact finder could find for the plaintiffs.
8

9 Plaintiff's allegation that there is "fraud within the Shapiro Attorney's network" is an
10 unsupported mere allegation that is not relevant to the subject case. There no allegations or any
11 evidence presented that any of the documents prepared and recorded in the subject foreclosure
12 were fraudulently prepared.
13

14 Plaintiff Kenneth Cook alleges Richard Magatelli was not at the Josephine County
15 Courthouse on December 17, 2010 at 11:00 AM *Cook Dec. ¶5 & ¶6*. Magatelli has been
16 appearing as Trustee's agent at Trustee's Sale for the last two years *Sen-Crowe Decl. ¶2 and*
17 *Magatelli Decl. ¶2*. A standard procedure has been established that Magatelli will receive
18 instructions immediately before the scheduled sale and report and will report if any interested parties
19 are at the sale. *Sen-Crowe Decl. ¶2 and Magatelli Decl. ¶2* Confirmation of instructions and
20 confirmation of sale results are keep on a daily log. *Sen-Crowe Decl. ¶3*.
21

22 This standard operating procedure was followed on December 17, 2010. Magatelli received
23 sale instructions at 10:57 AM while at the Josephine County Courthouse via a mobile phone. *Sen-*
24 *Crowe Decl. ¶5 and Magatelli Decl. ¶4* Magatelli search both inside and outside the Courthouse
25 for any interest parties and no other interested persons appeared. *Magatelli Decl. ¶4*. The Trustee's
26
27
28

1 Sale was continued by public proclamation to January 5, 2011. *Magatelli Decl.* ¶4. Magatelli
 2 provided fax confirmation of the continuance at 11:44 on December 17, 2011 and telephonic
 3 confirmation of that no other person appears at 3:30 PM on December 17, 2011. *Sen-Crowe Decl.*
 4 ¶6 and ¶7. This same procedure was followed by Magatelli at both December 2, 2010 continuance
 5 and the January 5, 2011 Sale. *Magatelli Decl.* ¶5.

6 III. CONCLUSION

7
 8 Neither Ms. Sen-Crowe nor Mr. Magatelli has any reason not to be truthful with the Court. A
 9 longstanding standard procedure was followed by Magatelli at each sale appearance as the Trustee's
 10 Agent. No reasonable fact finder would find for Plaintiff based of the evidence before the Court.
 11 Defendant's Motion for summary judgment should be allowed.

12 Dated this 6th day of April, 2011.

13
 14 /s/ Kelly D. Sutherland
 15 Kelly D. Sutherland, OSB #87357
 16 Attorneys for Shapiro & Sutherland, LLC
 17 SHAPIRO & SUTHERLAND, LLC
 18 5501 N.E. 109th Court, Suite N
 19 Vancouver, WA 98662

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